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HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1954**

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# No. 429

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CARL TRAXLER,

*Petitioner,*

*vs.*

THE STATE OF MISSISSIPPI

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**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

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COLIN L. STOCKDALE,
*Counsel for Petitioner.*

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CARL TRAXLER,

*Petitioner,*

*vs.*

THE STATE OF MISSISSIPPI,

*Respondent*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Your petitioner, Carl Traxler, respectfully petitions this Honorable Court for a writ of certiorari to the Supreme Court of Mississippi.

### Statement of Constitutional Question Involved

This case involves the right of a citizen of the United States to security against unreasonable searches and seizures.

The appellant was tried in the Circuit Court of Rankin County, Mississippi, upon a charge of Unlawful Possession of Intoxicating Liquors, which charge was based upon the search of a house in Rankin County, Mississippi, under the search warrant in the following words and figures:

"SEARCH WARRANT

THE STATE OF MISSISSIPPI,
*Rankin County:*

*To Any Lawful Officer of Rankin County:*

WHEREAS, D. P. Gayden, Jr. has this day made complaint on oath before the undersigned officer in and for said

county, that he has reason to believe, and does believe that intoxicating liquor is being:

(1) Stored, kept, owned, controlled or possessed for purposes of sale in violation of law.

(2) Sold or offered for sale in violation of law.

in the place of business, storehouse, residence and out houses, barns, stalls, smokehouse, crib and in field, yard and garden, automobiles, trucks and woods near the place of business, storehouse, residence of Unknown Owner in the Second District of Rankin County, Mississippi, and on Section 28, Township 5, Range 2 in Rankin County, Mississippi, and more particularly described as the above specified premises and possessions of Unknown Owner located:

All of SW¼ of Section 28, Township 5 North & Range 2 East lying north of Pearson & Whitfield Road in Rankin County, Mississippi, in violation of the laws of the State of Mississippi, and

(3) Attempted to be transported by automobile, truck, or other motor-power means of transportation on the above specified premises and possessions aforesaid, And that Unknown Owner is or are suspected of being guilty of said violations in said county and state. And the undersigned having examined and considered said affidavit, and also after having heard and considered evidence in support thereof, doth find that probable cause for the issuance of a search warrant in the premises doth exist:

WHEREFORE, we command you that with such aid as in your judgment shall be needed, you do proceed in the day or night time, to enter by breaking if necessary and to diligently search said above described places, or any of them, in said county and state, for intoxicating liquor, making known to the person or persons in control thereof, if any, your authority for so doing, and if any intoxicating

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liquor be found, that you seize same, and if practicable, that you bring them before H. R. Sprague, Justice of the Peace, District #2 Rankin County, Mississippi, on the 1 day of July, 1952, and also arrest the said Unknown Owner and all other persons as may be in possession or control thereof, and bring them before H. R. Sprague, Justice of the Peace, District #2 Rankin County, Mississippi, on the 1 day of July 1952, and have then and there this writ, with your proceedings noted thereon. Herein fail not.

Witness my hand, this the 28 day of June, 1952.

H. R. SPRAGUE,
*Justice of the Peace.*"

The introduction of this search warrant was objected to by appellant at the trial in the court below and a preliminary hearing had in the absence of the jury which established the fact that there were numerous houses, structures and residences located on the 80 acres of land described in the warrant. The Circuit Court after hearing this evidence overruled the objection to the introduction of the search warrant and permitted it to be placed in evidence before the jury, as a result of which appellant was convicted and sentenced to serve 90 days in jail and pay a fine of $500.00 and costs. From this conviction appellant appealed to the Supreme Court of Mississippi where the unconstitutionality of said search was urged, and again brought to the Court's attention by way of suggestion of error to the Court's opinion in affirming the judgment of the lower court.

It is the position of the appellant that the action of the Supreme Court of Mississippi in affirming the judgment and sentence of the Circuit Court and in overruling the suggestion of error to its opinion filed in this cause amounted to a deprivation of the rights of the appellant to security from unreasonable searches and seizures, in

that said warrant failed to particularly describe the place to be searched or the person to be seized, in violation of Section 23 of the Constitution of Mississippi and Article IV of the Amendments to the Constitution of the United States of America, and that he was further denied his rights and privileges of due process under the 14th Amendment to the Constitution of the United States.

## This Court Has Jurisdiction

This Court has jurisdiction to review the judgment here in question under Title 28, (now Section 1257 (3)) Section 344, of the U. S. Code Annotated (being judicial Code, Section 237 Amended) which is as follows, to wit:

"(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any state on the ground of it being repugnant to the Constitution, treaties, or laws of the United States; *or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution,* or any authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal Claim is sustained as where it is denied. Rule 30, Rules of the Supreme Court of the United States."

Jurisdiction is sought on the grounds that the petitioner, Carl Traxler, was denied his constitutional rights as herein set out and that the Supreme Court of Mississippi has decided a constitutional question in direct conflict with Amendment IV to the Constitution of the United States

and in direct conflict with the 14th Amendment to the Constitution of the United States and the due process clause thereunder.

This appeal is from a final judgment by the highest Court in the State of Mississippi in which the decision could be had. The Suggestion of Error was overruled on the 2nd day of November, 1953, and the application for review was granted by the Chief Justice of the Supreme Court of Mississippi on the 16th day of November, 1953, and that the appeal to this Honorable Court was perfected by the posting of a cost bond and appearance bond with supersedeas approved by the Clerk of the Supreme Court of Mississippi on the 17th day of November, 1953.

There has been a final determination of a constitutional question by the highest Court of the State of Mississippi and petitioner has exhausted all his remedies in the State Courts, and he now, therefore, seeks to have the decision of the Mississippi Supreme Court reviewed on certiorari by this Honorable Court.

**Reasons Relied Upon for the Allowance of the Writ**

A substantial constitutional question presents itself with respect to the right of the accused to security from unreasonable searches and seizures.

At line 13, Page 15 of the Record in this cause in the trial of the case on the merits the searching and arresting officer D. P. Gayden Jr., testified as follows:

> Q. "You did know there were other residences on the 80 acres, and this was the only house you searched under the warrant?
>
> A. Yes.
>
> Q. And if you had wanted a warrant for the club house you would have gotten one?
>
> A. If I had known it was there.
>
> Q. If you had wanted a warrant for the tenant house you would have gotten one?

A. I got a search warrant for the residence on this 80 acres.

Q. You got a search warrant for a residence on this 80 acres and you don't know who owned it, and you don't know whether this residence comprised 1 acre of land or the entire 80, although there were other residences there?

A. I wouldn't say that I know, but I know it was on this land." * * *

Since the search warrant herein complained of described as the place to be searched and the person to be seized,

"* * * the premises and possessions of unknown owner, located all of SW¼ of Section 28, Township 5 North and Range 2 East, lying North of Pearson & Whitfield Road in Rankin County, Mississippi, * * *"

and the officer Gayden testified as above shown that he did not know who owned the house he searched but he did know there were other residences on this 80 acres of land described in the warrant, we respectfully submit that the warrant did not particularly describe the place to be searched or the person to be seized with that degree of specificness required under both the Constitutions of Mississippi and of the United States of America.

We respectfully submit that this warrant could not have enabled an officer making a search thereunder to locate the residence to be searched with reasonable certainty or the person to be seized which is necessary under the Constitution of our land.

## Prayer

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court directed to the Supreme Court of the State of Mississippi, commanding said Court to certify and send to this Court a full and com-

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plete transcript of the record and of the proceedings of the said Supreme Court of Mississippi had in the case numbered and entitled on its docket Number 38,809, Carl Traxler vs the State of Mississippi, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment of the said Supreme Court of Mississippi may be reversed by this Court, and for such further relief as to this Court may seem proper.

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